

Rule 18, Ariz. R. Crim. Proc.

JURY TRIAL: Prosecutor can designate class 6 felony offense as misdemeanor and thereby remove need for a jury trial.....Revised 3/2010

All defendants charged with felony offenses in Arizona are ordinarily entitled to jury trials because felony offenses are generally punishable by six months or more in prison. See A.R.S. § 13-702; *Derendal v. Griffith*, 209 Ariz. 416, 104 P.3d 147 (2005) (adopting a modified form of the Federal test established by *Blanton v. City of North Las Vegas*, 489 U.S. 538, 543 (1981), that “any offense for which the maximum statutory penalty is less than six months incarceration is presumptively a petty offense to which the right of trial by jury does not attach”).

However, when the prosecutor has discretion to charge the offense as either a misdemeanor or as a felony and chooses to charge the offense as a misdemeanor, the defendant is not entitled to a jury trial on that misdemeanor charge. The same is true even if the charge was originally filed as a felony but the prosecutor exercises discretion to amend the charge to a misdemeanor.

In *Amancio v. Forster*, 196 Ariz. 95, 993 P.2d 1059 (App. 1999), the defendant was arrested for unlawful imprisonment, a class 6 felony, but the prosecutor exercised discretion to designate the offense as a class 1 misdemeanor. The prosecutor sought to try the defendant in municipal court without a jury. The defendant brought a special action, arguing that because the class 6 felony offense potentially was punishable by one year in prison, he was entitled to a jury for the misdemeanor offense. The Court disagreed. The Court noted that A.R.S. § 13-604(B)¹ specifically allows a prosecutor to charge a class 6 felony as a misdemeanor. That subsection provides in part:

If a crime or public offense is punishable in the discretion of the court by a sentence as a class 6 felony or a class 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting attorney:

1. Files an information in superior court designating the offense as a misdemeanor.
2. Files a complaint in justice court or municipal court designating the offense as a misdemeanor within the jurisdiction of the respective court.

¹ When *Amancio* was decided this section was then called 13-702(G). For clarity, this brief lists the current section.

3. Files a complaint, with the consent of the defendant, before or during the preliminary hearing amending the complaint to charge a misdemeanor.

A.R.S. § 13-604(B).

The Court concluded:

[T]he mere classification of an offense as a felony does not necessarily mandate a jury trial when the legislature has also granted the prosecutor the discretion to charge the offense as a misdemeanor and thus, long before trial, reduce the defendant's potential punishment. . . . Here, the state exercised its legislatively granted discretion to charge the offense as a misdemeanor. For that reason . . . we conclude that the mere initial classification of this offense as a class 6 felony does not make the offense jury-eligible.

Amancio v. Forster, 196 Ariz. at 98, ¶ 16, 993 P.2d at 1062.

In *State v. Quintana*, 195 Ariz. 325, 987 P.2d 811 (App. 1999), the prosecutor originally charged the defendant with criminal trespass in the first degree, a class 6 felony, but later amended the charging document to reduce the charge to a class 1 misdemeanor. The defendant argued that he was entitled to a jury trial on the trespass charge, asserting, "[H]is right to a jury trial was improperly waived by the redesignation of the trespass charge from a felony, which requires a jury trial, to a misdemeanor, which does not require a jury trial." *Id.* at 327, ¶ 7, 987 P.2d at 813. The Court of Appeals disagreed, stating:

Because the trespass charge was properly designated a misdemeanor, Defendant was not entitled to a jury trial and, therefore, was not entitled to a written or recorded waiver of that right. See Ariz. R. Crim. P. 18.1(b).

Quintana, 195 Ariz. at 327, ¶ 10, 987 P.2d at 813 [footnote omitted].